

DISCIPLINARY PROCESS

of the

IDAHO STATE BOARD OF ACCOUNTANCY

COMPLAINT, INVESTIGATIVE, AND HEARING PROCEDURES

This information has been prepared by the Idaho State Board of Accountancy to better inform the general public and licensees of the procedures utilized during an investigation and disciplinary proceeding.

BOARD AUTHORITY

The Idaho Board of Accountancy has authority over certified public accountants and licensed public accountants. The Board is not empowered to resolve fee disputes, award damages, order the return of fees paid, settle disputes over various interpretations of U.S. or Idaho Tax Codes, or otherwise settle claims. The Board does have the authority to discipline a licensee upon the violation of the Accountancy Act and Rules. Section 54-219, *Idaho Code* provides:

(1) After notice and opportunity for hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, for cause shown, the board may revoke, suspend, refuse to renew, administratively penalize, reprimand, restrict or place on probation the holder of a certificate or license, or refuse to issue any certificate or any license to an applicant, for any one (1) of the following causes:

(a) Any false statement with the intent to mislead or deceive the board or its members in connection with any application; or, cheating or any attempt to cheat in an examination. (b) Fraud or deceit in obtaining or renewing a certificate or license to practice as a certified public accountant or licensed public accountant under the provisions of this chapter.

(c) Dishonesty, fraud or gross negligence in the performance of professional services as a licensee or individual granted privileges under section 54-227, Idaho Code, or in the filing or failure to file his own income tax returns.

(d) Violation of any provision of this chapter, or any rule adopted by the board under authority granted by this chapter, or an order of the board directed specifically to the licensee.

(e) Conviction of or a guilty plea to a felony under the laws of any state or country.

(f) Conviction of or a guilty plea to any crime involving moral turpitude, an element of which is dishonesty or fraud, under the laws of any state or country.

(g) Representing oneself as a certified public accountant or licensed public accountant during any period in which the license of the person so practicing has been suspended or revoked by the board.

(h) Cancellation, revocation, suspension or refusal to renew or grant a license or privileges under section 54-227, Idaho Code, for disciplinary reasons by any other state for any cause.

(i) Practicing as a certified public accountant or licensed public accountant under a false or assumed name; provided, however, this subsection shall have no application to practicing as a certified public accountant or licensed public accountant under the name of a firm, when such style or name is in conformity with a type or form approved by the rules of the board.

(j) Habitual use of drugs or intoxicants to such a degree as to render the licensee unreliable and unfit to practice as a certified public accountant or licensed public accountant.

(k) Suspension or revocation of the right to practice before any agency of the United States government or of the state of Idaho, for any cause other than failure to pay a registration or similar fee.

(l) Having been declared mentally incompetent by a court of competent jurisdiction; provided, however, that when a person's license shall have been revoked or suspended for this cause, such license shall be reinstated by the board when said disability is judicially removed.

(m) Representing oneself as qualified or authorized to practice as a certified public accountant or licensed public accountant in this state without holding a current, valid, unrevoked and unsuspended certificate and license or privileges under section 54-227, Idaho Code.

(n) Performance of any fraudulent act while holding a certificate, license, permit or privileges under this chapter.

(o) Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee, or individual granted privileges under section 54-227, Idaho Code.

(2) The expenses, including attorney's fees, incurred by the board for any or all proceedings initiated against a person for violation of any of the provisions of this chapter may be charged against such person by the board, upon

the finding of a violation of this chapter, in addition to any administrative penalties which may be levied by the board against such person. Administrative penalties levied by the board shall not exceed two thousand five hundred dollars (\$2,500) per violation.

(3) In lieu of or in addition to any remedy specifically provided, the board may require of a licensee or a firm:

(a) A peer review conducted in such fashion as the board may specify;

(b) Preissuance review;

(c) Satisfactory completion of such continuing professional education programs or examinations as the board may specify; and

(d) Other similar remedies.

(4) In any action brought under the provisions of this chapter, evidence of the commission of a single act prohibited in this chapter shall be sufficient to justify a suspension, revocation, fine, administrative penalty, restriction, reprimand, injunction, restraining order, conviction or any other remedy authorized in this chapter. Evidence of a general course of conduct shall not be required.

TYPES OF COMPLAINTS

The following examples are some of the more common types of disputes that the Board reviews.

Amount and type of fees charged by a licensee is the complaint most frequently brought to the Board's attention. The Board cannot adjudicate fee disputes. If the licensee promised a stated fee when this is not the case, the Board may be able to intervene. Documentation such as a contract or other written agreement is necessary to substantiate such a claim. Buyers of professional accounting services should always agree up front to what the total fee or the hourly rate will be prior to using the services of a licensee.

Licensees are allowed to charge contingent fees or commissions for certain services, if the client is notified in writing prior to providing services. Idaho law specifically prohibits licensees from accepting commission or contingent fees from clients for whom the licensee provides attest or compilation services.

Tax return errors or findings in an IRS or state tax audit are frequently heard complaints. Unless gross negligence or failure to use due professional care in the preparation of the tax return can be shown, the Board typically does not adjudicate such claims. Taxpayers are required by law to ensure that the information on a return be accurate and complete. Before engaging an accountant for this purpose, it is helpful to clarify what he or she will and will not do if you are audited or if an error is found on your return, as well as what will be charged if you are audited.

Failure to return records to a client is another common complaint. Licensees, upon request and within a reasonable period of time, must furnish a client or former client a copy of the client's tax return, other documents, accounting or other records, etc., providing the client has paid for the services. The licensee is not required to furnish these records more than once, and may charge the client for actual costs of time and copying for subsequent requests. A client's original papers and working papers must be returned upon request.

Disclosure of confidential client information is yet another frequent complaint. Idaho law prohibits the disclosure of confidential client information obtained in the course of providing professional services, without the clients' specific consent. This includes income (unless it is public record), investments, taxes owed, retirement plans, etc.

Claiming to be a CPA or LPA without holding a license is a violation of the Accountancy Act. This is when individuals advertise or state in any format that they are licensed as CPAs or LPAs, offer to perform auditing or other reserved services, or in any way infer that they are licensed to perform these services. The Board office can tell you whether or not an individual is licensed as a CPA or LPA.

If you are uncertain whether your issue can be handled by the Board, please contact us. We will help you determine if we can be of assistance.

THE COMPLAINT, INVESTIGATIVE AND HEARING PROCEDURES

To file a complaint with the Board, you must fill out a complaint form, have it notarized, and mail or deliver it to the Board office. Receipt of your complaint will be acknowledged in writing. You may be contacted for additional information.

Your complaint will be reviewed by the Executive Director to determine if the complaint falls under the Board's jurisdiction. The Board's attorney may also be contacted. If your complaint does not fall under our jurisdiction, you will be notified in writing.

If it does, a copy of your complaint will be provided to the licensee, who is given an opportunity to respond. The complaint and response will be forwarded to the Board's Investigative Committee for additional review.

Depending upon the nature of the complaint, the Investigative Committee may authorize additional investigation by a committee member, an outside investigator, legal counsel, or the Executive Director. It is important to understand that even though an investigation is conducted, this does not mean that the Board believes a violation has taken place. This is part of the information gathering process.

The Investigative Committee evaluates the information and provides a recommendation for the Board's consideration at its next scheduled meeting. Recommendations can include items as:

- Dismissing the complaint for lack of probable cause that a violation occurred.
- Acknowledging a violation occurred and offering to enter into a stipulated consent agreement, where the licensee admits to the violation and accepts corrective actions.
- Advising the Board to hold a hearing to receive additional information from both sides before rendering a decision.

If a hearing is held it will be conducted by the Board and the Board's attorney. The hearing is similar to a court proceeding in that the licensee has the right to be represented by counsel and may have witnesses appear on his or her behalf. Testimony is heard under oath, documents may be entered as evidence, and all witnesses may be cross-examined.

After the hearing is held, the Board will issue a recommended order and will send a copy to the licensee. The Board may dismiss the complaint or it may revoke, suspend, refuse to renew, administratively penalize, reprimand, restrict or place on probation the holder of a certificate or license, or refuse to issue any certificate or any license to an applicant. The complainant and the licensee will be informed of the Board's decision and any final formal action.

Investigations and proceedings are considered to be confidential and closed to the public. Formal actions of the Board are open records and may be appealed under administrative law.

On occasion, the Board or the Executive Director may resolve matters informally when it is determined that the public would be best served by alternative dispute resolution (ADR). Mediation by an outside party may be requested at any time, by either party, or may be suggested as a course of action by either the Executive Director or the Board. The parties are responsible for any expenses incurred. The Board will attempt to assist in any reasonable way to resolve disputes using this method if it appears that the complaint would be a good candidate for ADR. The Board can supply a list of certified mediators upon request.

Please inform us if you need any accommodations when filing a complaint or attending a hearing.